

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2022

Public Authority: NHS England
Address: Quarry House
Quarry Hill
Leeds
LS2 7UE

Decision (including any steps ordered)

1. The complainant requested information from NHS England (the public authority). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 7 December 2021, the complainant made the following request for information to the public authority:

Part 1

On 6.1.10 at or around 17:11, at the end of a series of emails which NHS England knows well, [NAME REDACTED] wrote to [NAME REDACTED] with copies to [NAME REDACTED] and someone in the Monitor Communications Department who was probably [NAME REDACTED] or possibly [NAME REDACTED]. The letter was to inform [NAME REDACTED] and [NAME REDACTED] that they had directed the Communications Department to surreptitiously replace the online published minutes of the Monitor Board Meeting of 27.5.09 with [NAME REDACTED]'s

newly edited version in order to hide from the public the reasons why University Hospitals of Morecambe Bay NHS Trust (UHMB) had failed at the last moment to be authorised by Monitor as a Foundation Trust as expected on 1.6.09. No record was placed online to indicate that the minutes had been edited 6 months after publication, but I detected that this had been done and began the process of finding out how the editing had been contrived. This part of the request is for the full unredacted version of this letter in electronic (not paper) form.

Part 2

The enclosed file CommunicationsICO&NHSE_Jun2019 contains the redacted versions of email letters between the two organisations, and this part of the request is for legible electronic versions of the full unredacted letters and for the name of the Chief Executive referred to in the 11.6.19 letter who is responsible for the letters from NHSE to ICO dated 17.6.19. This request includes a repeat request for the information requested in Part 1. The additional enclosed file is for the benefit of The Information Tribunal which is where I anticipate, on the basis of past experience, the case will transfer. The file shows the result of all the secrecy around the first steps in the cover-up of the UHMB failings which led to the disastrous authorisation of 1.10.10, the first of the 3 (or 4) periods of 'Special Measures' which began in October 2011 and the spiralling UHMB debt which is admitted to be over £200 million." (sic)

4. The public authority refused to provide some of the information requested citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹ The scope of this exemption was used when redacting names for part 2 of the request made.
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

data are that the information must relate to a living person and that the person must be identifiable.

7. In this case, the Commissioner is satisfied that the withheld information is the personal data of non-senior staff members.
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
9. When considering whether the disclosure of personal information would be lawful, the Commissioner must deliberate whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
10. The Commissioner considers that NHS England have acknowledged the public right to access information under FOIA and has recognised that there is an interest with the work it is involved in generally.
11. The Commissioner considers that the complainant is pursuing a legitimate interest but that disclosure of this personal information through FOIA is not necessary to satisfy it. This is because the legitimate interest has already been met through the provision of redacted email letters between the ICO and NHSE. The withheld information would add no further understanding, or context. The Commissioner considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.
12. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

Right of appeal

13. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

14. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF